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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

17 Cr. 630 (ER)

5 MARK S. SCOTT,

6 Defendant.

7 -----x

Bail Hearing

8 March 12, 2020
9 4:30 p.m.

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 United States Attorney for the
16 Southern District of New York

BY: CHRISTOPHER J. DiMASE

16 NICHOLAS S. FOLLY

Assistant United States Attorneys

17 BY: JULIETA V. LOZANO,

Special Assistant United States Attorney

18 COVINGTON & BURLING LLP

19 Attorneys for Defendant

BY: ARLO DEVLIN-BROWN

20 KATRI A. STANLEY

21 DAVID M. GARVIN (via telephone)

Attorney for Defendant

22 ALSO PRESENT:

23 NEIL G. TAYLOR

24 Attorney for Movant Halle

25 JOHN MOSCATO, Pretrial Services

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for
3 the record.

4 MR. DiMASE: Good afternoon, your Honor. Christopher
5 DiMase for the government. I'm joined at counsel table by
6 AUSAs Nick Folly and Julieta Lozano, who is actually a Special
7 Assistant U.S. Attorney, as this court knows, and also by John
8 Moscato from the United States Pretrial Services Office.

9 THE COURT: Good afternoon.

10 MR. DEVLIN-BROWN: Good afternoon, your Honor. Arlo
11 Devlin-Brown and Katri Stanley for Mr. Scott. I believe
12 co-counsel David Garvin is appearing by telephone along with
13 Mark Scott pursuant to the court's order that they can distance
14 themselves.

15 THE COURT: Okay. Mr. Garvin?

16 MR. GARVIN: Good afternoon, your Honor. I am present
17 and Mark Scott is also present, sitting next to me.

18 THE COURT: And good afternoon to you both. You know,
19 Mr. Garvin, you made the front page out here.

20 MR. GARVIN: Unfortunately, yes.

21 THE COURT: And?

22 MR. TAYLOR: Good afternoon, Judge Ramos Neil Taylor
23 on behalf of Marietta Halle.

24 THE COURT: I'm sorry, how do you pronounce the last
25 name?

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1 MR. TAYLOR: "Haley."

2 THE COURT: "Haley."

3 So this matter is on for a bond hearing, and this bond
4 hearing was initiated by a letter that I received from
5 Mr. Taylor on behalf of Ms. Halle on February 6, 2020.
6 Mr. Taylor, did you wish to put on the records the reasons
7 therefor?

8 MR. TAYLOR: We will travel, with the court's
9 permission, on the affidavit that was filed.

10 THE COURT: Very well. There was an affidavit that
11 was filed by Ms. Halle, and I don't know whether a copy has
12 been provided to Mr. Devlin-Brown at this point.

13 MR. DiMASE: That's fine, your Honor. We spoke with
14 Mr. Taylor prior to today's proceeding and asked him if he
15 would permit us to turn it over just before the proceeding, and
16 he preferred the court to decide whether or not that should be
17 disclosed. I don't know if he wishes to be heard on that.

18 MR. TAYLOR: So thank you, Judge.

19 So the court knows, Ms. Halle is of the decided
20 opinion that she would prefer to keep the affidavit sealed. Of
21 course that's subject to your Honor's call. But the fact of
22 the matter is, we don't really feel like we have a dog in the
23 fight as it relates to the bond itself. It's just the
24 protection of Ms. Halle's interests.

25 THE COURT: I think given the seriousness of the

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1 issues that we are discussing and the importance of it, not
2 only to Ms. Halle, but to Mr. Scott, that he ought, in
3 fairness, to receive a copy of the affidavit.

4 So if you have a copy, could you please provide it to
5 Mr. Devlin-Brown

6 MR. FOLLY: We just handed it over, your Honor.

7 MR. DEVLIN-BROWN: And I don't know if there is a way
8 to send it to Mr. Garvin so that he and Mr. Scott can see it as
9 well.

10 MR. DiMASE: I have everything prepared just for that
11 purpose, so if you give me a moment, your Honor, I will e-mail
12 Mr. Garvin.

13 THE COURT: Okay.

14 And I don't think that I am telling tales out of
15 school if I were to simply state for the record that Ms. Halle,
16 who provided cash surety on Mr. Scott's bond, wishes to be
17 exonerated from the obligation of maintaining those amounts
18 with the court. She wants no longer to serve as a surety to
19 Mr. Scott. So I will give everyone an opportunity to read
20 those documents and we will pick up.

21 MR. DiMASE: If I could ask Mr. Garvin, who is on the
22 phone, when he has received those materials to just let us know
23 that they went through.

24 MR. GARVIN: Yes, I will. I am expecting them now.

25 MR. DiMASE: Thank you.

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1 MR. DEVLIN-BROWN: And, your Honor, I don't mean to
2 delay the court at all, but we have just received these
3 documents with numerous exhibits, the affidavit. I would like
4 at least ten minutes if we can have that to --

5 THE COURT: Absolutely. I will go back. I will come
6 back out in ten minutes.

7 (Recess)

8 THE COURT: Mr. Devlin-Brown, I trust you have had an
9 opportunity to review those document?

10 MR. DEVLIN-BROWN: We have had some opportunity, your
11 Honor.

12 THE COURT: Very well. So now that the folks have
13 reviewed these documents -- and I understand, Mr. Devlin-Brown,
14 that you have also received a copy of the government's letter
15 to me dated yesterday?

16 MR. DEVLIN-BROWN: Yes.

17 THE COURT: Very well, then. Given that, Mr. DiMase.

18 MR. DiMASE: Your Honor, just so the record is clear
19 about the documents that were provided to counsel for
20 Mr. Scott, we provided the filing by Mr. Taylor and the
21 attached exhibits, including the affidavit of Ms. Halle. We
22 also provided our letter of February 12, 2020 responding to
23 that application, and then we provided our letter dated
24 yesterday, March 11, 2020 as well, so all of those documents
25 have been turned over.

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1 THE COURT: Okay. Mr. DiMase, based on the letter, it
2 appears clear; but, for the record, what's the government's
3 position on Mr. Scott's continued bail?

4 MR. DiMASE: Your Honor, in short, in light of the
5 heightened standard presentence and the egregious violations of
6 the bail conditions committed by Mr. Scott as laid out in the
7 government's letter, the government is seeking detention at
8 this point.

9 THE COURT: Okay.

10 MR. DiMASE: I can expand on that, obviously, but
11 that's the bottom line.

12 THE COURT: Why don't you, because I know that the
13 government made the request that he be remanded right after
14 trial, and at that time I refused that request. What has
15 happened since?

16 MR. DiMASE: Well, one thing, your Honor, is I know
17 that the car sale was something that was raised in the
18 immediate after-trial bail proceeding. I think we have laid
19 out a few more facts relevant to that sale, and I think it is
20 particularly important, as the court was probably aware, but
21 still, to understand Scott's level of knowledge there, it's not
22 just merely that that car was subject to a seizure warrant or,
23 as the government failed to point out immediately after the
24 trial, that it was also listed in the government's forfeiture
25 bill of particulars -- that fact was not put on the record

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1 immediately after the trial. I don't think we had recalled
2 that, but that's a public filing on the docket sheet that
3 Mr. Scott would have easily had access to. But more
4 fundamentally, he knew he bought the car with OneCoin proceeds,
5 and there is an exhibit from the trial that shows the money
6 going from OneCoin accounts to the car, and we have proved that
7 at trial. That is effectively a separate crime, engaging in
8 monetary transactions with criminal proceeds, and the proof of
9 his knowledge is not just the fact that it was subject to a
10 seizure warrant or that it was in the government's bill of
11 particulars, it is the evidence that he knew that was the money
12 he was using to buy it. And I think it really just bears
13 noting that that ultimately is money that should be going back
14 to OneCoin victims. He is taking that money that should go
15 back in restitution and he is using it for himself and all
16 while it is subject to the seizure warrant for that very
17 reason, subject to the forfeiture bill of particulars for that
18 very reason. So I don't want to belabor that point --
19 obviously we raised it after the trial -- but I think there are
20 some details there that we didn't really address immediately
21 after the trial.

22 Then there are a whole host of other facts that have
23 developed, pretty much all of which are following trial.

24 First of all, there is the information provided by
25 Ms. Halle. Obviously the court has her affidavit. I think it

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1 is fair to say that she believes that she is also now a victim
2 of fraudulent conduct committed by the defendant, that she has
3 lost faith in him, and that that is effectively the reason she
4 wants out of this bond. I think she is concerned that not only
5 will she be never getting any of the money she has given
6 Mr. Scott back for loans and purported investments, now she may
7 also lose the \$750,000 she graciously agreed to put up for him
8 as a friend when this case started. And so she wants to
9 protect at least that portion of the money; and, frankly, the
10 government does not object to that in part because we don't
11 feel it would be appropriate to victimize her in that way based
12 on Mr. Scott's conduct. And ultimately at this stage I think
13 it's fair to say that we view her as a victim of ongoing
14 conduct by Mr. Scott and that she should get this money back.

15 But I think the most obvious example of that is this
16 loan which Mr. Scott provided to her -- or which Mr. Scott
17 received from her of \$500,000 with a promise that he would pay
18 it back within six months. The six months has passed and
19 Ms. Halle has not seen any of that money.

20 She also has an investment in one of the properties
21 that's subject to forfeiture in this case. She made a \$1
22 million investment in that before Mr. Scott was arrested. She
23 has not seen any revenue from that investment, and --

24 THE COURT: What type of property is that?

25 MR. DiMASE: So if you will recall, your Honor, I

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1 think if you flip to Exhibit F attached to the government's
2 filing, so this is a beachfront property located in Barnstable,
3 Massachusetts, on Cape Cod, that Mr. Scott purchased as an
4 investment property; and, as reflected in the financial
5 tracing, the government traced over \$2 million of OneCoin fraud
6 proceeds used to make that purchase. Ms. Halle was also asked
7 to contribute money as a purported investment into this
8 investment property. As I said, my understanding is that she
9 has not seen any revenue from that.

10 And in part, in an effort to promise payment of money
11 to Ms. Halle, Mr. Scott provided her with a proposed mortgage
12 on this property, one of the properties he bought with OneCoin
13 proceeds, and that was just in December 2019. That would have
14 been about ten months after the property was listed in the
15 government's forfeiture bill of particulars in this case. And,
16 again, I think, fundamentally, going back to the main point
17 here, Mr. Scott himself was aware that this house was purchased
18 with OneCoin proceeds and here he is offering, despite the fact
19 that it's in a bill of particulars, a forfeiture bill of
20 particulars, offering a mortgage to underlie a promissory note
21 to Ms. Halle. Mr. Taylor may speak to this further, but my
22 understanding that Ms. Halle did not agree to that proposal.
23 But that's only one example of Mr. Scott essentially using
24 mortgages against properties subject to forfeiture to
25 substantiate promissory notes of money he owes to other

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1 people.

2 So the second example is a contractor working on the
3 31 Dale Avenue property. That property is Attachment H to the
4 government's filing of last night, another even nicer
5 beachfront property. This one into which the government traced
6 somewhere in the ballpark of 3.5 to \$4 million of OneCoin
7 proceeds used to make that purchase. This property has needed
8 quite a bit of work. There has been a contractor working on
9 the property. One of the government's -- one of the
10 attachments here relates to a \$300,000 payment made from a
11 Cayman Island bank account to that contractor for work on this
12 property in April of 2019. And then apparently, when Mr. Scott
13 was in negotiations with other money owed to the contractor, he
14 offered a mortgage against this property to cover 250,000
15 ballpark dollar debt to the contractor, which in fact that
16 mortgage was effectuated and a promissory note apparently was
17 provided to the contractor for that amount based on a mortgage
18 on this property. And, again, just to be clear, this was in
19 the government's bill of -- forfeiture bill of particulars in
20 February of 2019, so ten or eleven months before he mortgaged
21 it; and, again, he knew that this property was purchased using
22 OneCoin money. So he is offering up, as security against debt,
23 properties which should be forfeited and sold, again, to go
24 back to restitution of OneCoin victims. That's the bottom
25 line.

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1 So we have somebody who has violated a court order
2 insofar as he sold a car under a seizure warrant. He has
3 defrauded his own suretor who he has -- who graciously put up
4 money for his bond. He has attempted to mortgage two
5 properties subject to forfeiture and actually mortgaged one.

6 And I think this last point is not as important, but
7 it does bear noting that the government found out about this
8 violation of the home incarceration condition shortly after the
9 trial only from reading a blog post online, which we frankly
10 thought couldn't be true, that he had gone to a restaurant with
11 security guards days after the trial, after this court
12 subjected him to a home incarceration condition. But the
13 government reached out and learned from Pretrial Services that,
14 yes, in fact, because he was wearing a GPS device, they were
15 able to tell where he was that day, and that he had provided a
16 reason to leave his house that day of visiting Mr. Garvin, that
17 he spent about an hour with Mr. Garvin, and then the GPS shows
18 that he went to this restaurant for about two hours to have
19 dinner under the false pretense of visiting with his lawyer
20 while under a period of home incarceration.

21 So like I said, I don't think that's of paramount
22 importance, in terms of the much more serious violations here,
23 but it shows that this is somebody who is not willing to follow
24 the court's clear directives and bail conditions in this case.
25 In addition to committing crimes, he is flagrantly violating

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1 those very basic conditions.

2 I would also say, your Honor, that we have just
3 looked, based on a question posed by Mr. Devlin-Brown just
4 before the proceeding, and actually it appears that the account
5 in the Cayman Islands referenced in Exhibit I, that -- from
6 which \$300,000 was transferred to the contractor in April of
7 2019, that that account at First Caribbean Bank was also
8 subject to restraint in a restraining order that was provided
9 to Mr. Scott in discovery, and that was -- that account would
10 have also been included in the government's forfeiture bill of
11 particulars in this case on the publicly filed docket. So in
12 that case another violation of a clear court order which we
13 are -- we were not aware of until we checked this afternoon.

14 THE COURT: Okay.

15 MR. DiMASE: So that leads me to one other point, your
16 Honor. The standard for presentence bail is very heightened.
17 It flips the presumption to the defendant or the burden to the
18 defendant, I should say. It is on the defendant to show by
19 clear and convincing evidence that he does not pose a risk of
20 flight or a danger to the community. There is another statute
21 applicable here, which is 3148(b), and that statute provides
22 that there is probable cause to believe that while on release
23 the person committed a federal, state, or local felony, a
24 rebuttable presumption arises that no condition or combination
25 of conditions will assure that the person will not pose a

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1 danger to the safety of any other person or the community.

2 And so to be clear, all of this, whether pretrial or
3 posttrial, Mr. Scott did, while on bail. Some of it he did
4 after being convicted of serious offenses carrying a 50-year
5 statutory maximum and a 50-year guidelines sentence. There is
6 both a risk of flight, in particular because Ms. Halle is
7 requesting that her money be returned and that was a critical
8 component of the pretrial bail package under a very -- a much
9 less heightened standard. But it is not just risk of flight.
10 There is a danger here, a financial danger, and it is the
11 danger that is addressed by 3148(b). This is somebody who is
12 committing financial crimes and using OneCoin victim money for
13 himself all while on bail or after being convicted of fraud
14 crimes. He poses a real danger to the community, although I am
15 not arguing here physical danger, but financial danger, and
16 that is, I think, a real concern here, your Honor, given the
17 pattern of conduct before the court.

18 So on the grounds of those very egregious violations
19 of bail conditions, his commission of new crimes while on bail,
20 and in some cases after trial in this case, the government
21 believes that detention is the only appropriate option at this
22 stage, your Honor.

23 THE COURT: Thank you, Mr. DiMase.

24 I suppose that I should, as a procedural matter, deal
25 with the request of Ms. Halle to be exonerated. Mr. Taylor,

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1 did you wish to be heard any further on that?

2 MR. TAYLOR: If the court has any questions it would
3 like me to direct myself to, fine; otherwise, no, sir, I'm
4 satisfied.

5 THE COURT: Very well. And I understand from
6 Mr. DiMase the government does not object.

7 Mr. Devlin-Brown, is there any reason why I should not
8 exonerate Ms. Halle?

9 MR. DEVLIN-BROWN: Your Honor, our chief complaint
10 here with respect to this request is really the same as with
11 the revocation of bail in that we would like some time to
12 respond. Do I know off the top of my head what the standard is
13 for a suretor to be removed from a bond? I don't. Do I know
14 what the facts and circumstances are that are in this affidavit
15 that has just been provided to me? I don't. So I would like
16 time to address that issue and then, also, to the extent the
17 court is inclined to remove her, time to provide a proposed new
18 suretor or other new bail conditions to address any decision by
19 the court to take her off the bond.

20 THE COURT: I'm going to take her off the bond.
21 Again, whether or not what she puts forth in her affidavit
22 amount to a separate and independent crime, they certainly
23 amount to, at least on the part of Ms. Halle, a complete lack
24 of confidence in Mr. Scott's ability and willingness to
25 continue to appear as required to court. She has put up a

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1 substantial amount of money based on representations that
2 Mr. Scott made. Apparently Mr. Scott has again and again
3 failed to meet the promises that he made to her, and it seems
4 unduly harsh for this court to continue to hold her to the
5 obligation that she made to Mr. Scott many months ago. So she
6 will be exonerated.

7 That, of course, removes from the bail package
8 supporting Mr. Scott's being out on bail the substantial piece
9 of it, which was cash in the amount of \$750,000. I know from
10 my reading of the transcripts before the magistrate, when they
11 were handled, the bail applications, that that was a
12 significant part of the bail package, particularly given
13 Mr. Scott's status as a dual citizen of a country that does not
14 extradite its own citizens. The government has repeatedly made
15 that argument, and the very substantial bail package that was
16 established at the time certainly gave me some comfort that it
17 was sufficient and certainly that Mr. Scott, by continuing to
18 appear in court, by sitting through the trial, appeared not to
19 be a flight risk.

20 The admitted lack of confidence on Ms. Halle's part in
21 continuing to vouch for Mr. Scott, along with the incidents
22 highlighted by the government in its letter to me of March 11,
23 would show that Mr. Scott continues to use some of these assets
24 which are subject to forfeiture, that were subject to court
25 orders, as though they were his own, after the bail conditions

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1 were imposed, after sitting through trial, after being
2 convicted suggests to me that he not only is a flight risk but
3 is an economic danger to the community and, accordingly, the
4 bail is revoked, and I would require Mr. Scott to
5 self-surrender to the appropriate facilities tomorrow, Friday,
6 March 13, in Coral Gables. I don't know what that facility is.
7 I'm going to have to rely on the government to provide
8 Mr. Scott's attorneys with that information, but he should
9 report there no later than 9 a.m. tomorrow morning.

10 Mr. Devlin-Brown.

11 MR. DEVLIN-BROWN: I'm sorry, your Honor. I did
12 address the court on the issue of Ms. Halle being removed from
13 the bond, but I hadn't been aware your Honor was asking for us
14 to argue against the government's position on revocation of the
15 bond, and we do wish to be heard on that issue.

16 THE COURT: I'm happy to have you make your record,
17 Mr. Devlin-Brown.

18 MR. DEVLIN-BROWN: Okay. Thank you, your Honor.

19 So obviously it is a very serious -- these are serious
20 allegations, and we are not disputing that at all, your Honor.
21 However, it is a serious decision your Honor has to make. Even
22 if your Honor were to at the end of the day sentence Mr. Scott
23 to some period of jail, there is a tremendous difference
24 between sentencing someone who has gone through the BOP
25 designation process, can self-surrender at an appropriate

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1 security facility, appropriate to addressing medical needs, to
2 throwing someone in on short notice into a jail system, whether
3 it's in Miami or New York, particularly, and I guess to be
4 transferred from Miami to New York, particularly at a time when
5 we have a virus that is spreading and posing risks to the jail
6 system. And that won't just be a risk to Mr. Scott now when he
7 is in. It will be a risk that will extend beyond through any
8 period of incarceration.

9 So I think that's a very serious thing, and so I do
10 wish to be heard a little bit further on why we don't think
11 that's appropriate.

12 So first of all, in terms of the answers to what the
13 government has raised, we can't answer all of these questions
14 now. This is a very detailed document. I'm not sure why it
15 was provided only under seal and *ex parte*, and we can only see
16 it now right before the court begins. I guess the government's
17 position is there is some flight risk. I don't see the flight
18 risk.

19 And beyond that, there are responses. There are
20 things we would like to do to respond. Just to give you some
21 examples, a short period where we could respond and at least
22 confer with our client, look up related records, and there are
23 a couple of things we would do. First of all, there are
24 allegations that funds went from various accounts to -- that
25 are allegedly linked to OneCoin to certain properties where

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1 there were mortgages of properties or a car was sold. We would
2 like to look into the details of that, understand more about
3 them, make sure the government's statements that these are
4 OneCoin funds are correct, and also, crucially, look into the
5 issue of what our client had notice of.

6 THE COURT: Wasn't that established at trial?

7 MR. DEVLIN-BROWN: Which point, your Honor?

8 THE COURT: The fact that these assets were acquired
9 by OneCoin funds.

10 MR. DEVLIN-BROWN: That may have been -- well,
11 actually I don't know that -- there wasn't tracing each of
12 these assets I'm not sure at trial, but some of the conduct the
13 government is pointing to happened before trial. Some of the
14 conduct the government is pointing to with respect to the car,
15 for example, that allegation involved a sale that was done I
16 believe in June of this year.

17 THE COURT: I'm sorry. I thought that you were making
18 the point that some of these transactions that are addressed in
19 the government's March 11 letter may not have been used with
20 OneCoin funds, and my question was, wasn't it established at
21 trial that these assets, including the homes, were purchased
22 with OneCoin funds? I may be mistaken.

23 MR. DEVLIN-BROWN: I don't know that it was
24 established that each and every one of these assets was
25 purchased solely with OneCoin funds. We also have filed a Rule

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1 29 that addresses the issue of whether funds from accounts that
2 had no U.S. investors or no U.S. investments are appropriately
3 wire fraud as an SUA to money laundering. But the crucial
4 issues for bail, as I thought the court was perhaps suggesting,
5 that Mr. Scott, in taking actions after the trial of these
6 assets, would have himself had a state of mind that this was
7 clearly improper or criminal conduct. This is conduct he
8 engaged in well before trial. And it's not clear, and, again,
9 we would like to respond, that Mr. Scott had awareness that
10 these were things that he was not allowed to do.

11 For example, at the end of the -- and I can't be
12 comprehensive here because I'm just sort of looking on the fly
13 at these, but at the end of the last trial, the only trial, the
14 government made the point that the car had been disclosed to
15 Mr. Scott through a discovery letter, you know, that they were
16 having some seizure of the car. From Mr. Scott's perspective,
17 the government agents came. They took certain cars. They
18 didn't take other cars. We looked at the discovery letter the
19 government referred to. It has document after document of all
20 sorts of seizure warrants that were served on banks, served in
21 his home. It wasn't meant to provide Mr. Scott with notice of
22 these are things you cannot touch. It was discovery for
23 counsel as to the affidavits and warrants that have been issued
24 in the case. And the bill of particulars that Mr. DiMase
25 referred to came subsequent to that. Anyway --

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1 MR. DiMASE: They came long before the car sale, to be
2 clear.

3 MR. DEVLIN-BROWN: Yeah, you know, there is only so
4 much I can do on the fly. I can't compete with Mr. DiMase
5 because he has been able to brief this and research it. I
6 would like a chance to do so. Mr. Scott would like a chance to
7 do so. That's one thing we would like to address.

8 There are two other of their allegations or three,
9 really, that are about what people have apparently told the
10 government. It is a pretty serious thing to say that Mr. Scott
11 defrauded Ms. Halle. And just, again, reading this on the fly,
12 it seems the core fraud allegation is that Mr. Scott borrowed
13 money from her, saying he would pay her back, and he didn't pay
14 her back. That's not the first time in the world someone's
15 borrowed money, maybe overoptimistically, hoping to pay it back
16 and doesn't. That may be a civil issue. That doesn't mean
17 it's a fraud unless there is intent at the time to defraud the
18 person.

19 THE COURT: I agree entirely, which is why I was
20 careful, I think, to make the point that even if these
21 allegations were not independent crimes.

22 MR. DEVLIN-BROWN: Thank you, your Honor. And I
23 understand your Honor's ruling with respect to that and
24 Mrs. Halle. But to the extent that your Honor is thinking
25 about using that to revoke his bond, I would like to look into

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1 the circumstances of what money was offered by Ms. Halle, what
2 the terms were that Mr. Scott agreed to. We would want to talk
3 to him about that and put in any sort of response.

4 The same thing is true about the contractor who
5 apparently says he didn't know of any liens on this property.
6 We would like to look into more about what work he did.
7 Because, again, going off the top of my head, my basic
8 understanding is that that was a house that was under
9 construction at the time and needed emergency work on it. It
10 was a project in development or it would be ruined for the
11 winter. And I think the expense he put into it probably
12 increased the value of the property. That's not a perfect
13 defense to this at all, your Honor, but I think it's a relevant
14 consideration, and it's something that we would like an
15 opportunity to look at.

16 And the same thing goes for these allegations of him
17 violating the conditions of his release through this dinner.
18 That's something ordinarily when there is an allegation like
19 that, you have a pretrial officer or someone who is bringing it
20 and someone who we could look at the file and see what the
21 evidence is. My understanding -- and, again, it is something
22 we would like to investigate -- is that Mr. Scott did meet with
23 Mr. Garvin on that occasion, that he then did have dinner, and
24 the government discloses this at the end, it is essentially at
25 his home, it's, you know, that's what they say, that Seasons 52

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1 Restaurant in Coral Gables, Florida, where he resides, or it is
2 very close to his home. There have been other occasions -- I
3 don't know about this one, your Honor. There have been other
4 occasions where his pretrial officer has specifically permitted
5 him to have meals going to and from legal, medical
6 appointments, etc. So, again, it's a serious allegation --

7 THE COURT: I actually don't think that's a serious
8 allegation, and it entered into my consideration not at all,
9 the fact that he had this dinner.

10 MR. DEVLIN-BROWN: Okay. So those are the things we
11 would like to do if we had more time. And as to why your Honor
12 should give us some more time, there are basically two reasons,
13 your Honor. One is, you can say a lot of things perhaps about
14 Mr. Scott, you were at a whole trial involving Mr. Scott. One
15 thing I think is very hard for anyone to say is that this is a
16 man who, tail between his legs, knows he did something and is
17 running away. This is not a man who is running away. This is
18 a man who has maintained his innocence from the get-go, who
19 fought this case at trial, who filed very extensive posttrial
20 motions, who intends to appeal any adverse ruling from the
21 court, who intends to engage in sentencing advocacy, so if he
22 is not -- if he does have to face some period of incarceration
23 he has an opportunity to argue as free as possible. This is
24 not a man, even with these allegations, who is on the verge of
25 going somewhere. That is one thing that I think should give

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1 your Honor a little bit of comfort in giving us more time.

2 And the other consideration, your Honor, really is
3 this man's health. I made the general point at the beginning,
4 but Mr. Scott is not a well man and, like some people perhaps,
5 you know, he is perhaps not really addressing his medical
6 problems until now as he is coming up for sentencing and
7 realizes that the decisions that he makes medically now he may
8 have to live with for some period of years.

9 He has long been diagnosed with sleep apnea, severe
10 sleep apnea. He is now undergoing testing which,
11 unfortunately, the doctors just had to cancel because -- these
12 are Cape Cod doctors -- because of the coronavirus outbreak.
13 But he is undergoing testing for heart disease. He is
14 undergoing testing for whether his elevated white blood cell
15 counts reflect a more serious infection or perhaps something
16 even worse. He is in the middle of this process, and your
17 Honor knows full well that the Bureau of Prisons does not
18 provide adequate medical care, frankly, to anyone, and they
19 certainly aren't capable of doing this sort of work.

20 So giving him the time, if he is not a risk of flight,
21 to go through some of this, to get him diagnosed, so that he
22 can go, if he has to be sentenced to jail, to the Bureau of
23 Prisons with a record of what he has. Because he is not going
24 to get that kind of diagnosis in the Bureau of Prisons. They
25 are not going to send him to a prison hospital without some

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1 basis for doing so.

2 So that's what we would ask, your Honor. We don't
3 think he is a risk of flight. We think there are responses we
4 could at least investigate and give the court a fuller picture,
5 and we think that putting him in jail now without that is going
6 to do grievous damage to his health for a long period of time.

7 I would just ask -- I'm not with Mr. Scott. that was
8 at our request, Mr. Scott's request. He is with Mr. Garvin
9 now. I don't know if they have had any opportunity to speak
10 right now. But if your Honor permits, I would like Mr. Garvin,
11 to the extent he has anything further, to be permitted to
12 speak.

13 THE COURT: Mr. Garvin, I'm happy to hear you.

14 MR. GARVIN: Yes, your Honor. I would join in what
15 Mr. Brown said, what Arlo said, and I would like to add a few
16 things that I have been scrambling here looking at the
17 documents that the government has supplied. Respectfully, your
18 Honor, it would seem to me that this is an important decision
19 that should deserve hearing both sides presenting a cogent
20 argument. The government has undoubtedly taken days, if not
21 weeks, to put together their presentation; and giving us
22 literally minutes to put together our presentation, I don't
23 think would be fair and is just.

24 But let me go to a couple of things that I have
25 scrambled to point to.

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1 The funds that were invested, the government states
2 that there was an offer in April of 2019, I believe, to give a
3 mortgage to Marietta Halle of \$300,000. That transaction never
4 went through. The amount of money of \$250,000 that went to the
5 contractor, Mr. Scott did not have, from what I can tell, the
6 ability to pay the contractor, but there was a determination by
7 the contractor that if a certain amount of work was not done,
8 the home would likely through the winter incur substantial
9 damage and ultimately, when the house is in fact sold for
10 restitution, that the amount that would be received would be
11 substantially less than if the house had this minimal amount of
12 work done to preserve it from being damaged. So this is a case
13 where I don't argue that it is correct, but it is a case that
14 was well meaning, which was to preserve an asset, which is one
15 of the major assets that can be sold for restitution purposes.

16 With regard to the dinner, I know the court has stated
17 that with the dinner it did not view it as significant, but
18 Mr. Scott did attend that dinner with two of the people from
19 our litigation team that could not make it to my office for
20 that one-hour meeting. I had to leave, so Mr. Scott, on his
21 way home, stopped and met them to discuss what he had just
22 discussed with me and what work that needed to be done, and
23 then he went home from there, which was approximately two
24 blocks from his home is where the meeting occurred.

25 With regard to Ms. Halle and the investment that she

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1 made with Mr. Scott, that investment, I understand, and I would
2 like to run it down, is, first of all, in real property and
3 other business ventures, and then the loan is secured by a
4 third party. So this is not a situation in which it is
5 resolved that Ms. Halle has loaned money that will not be
6 repaid. In fact, based on the limited amount of time I have
7 had to scramble here, it appears that she may well be secured
8 100 percent.

9 So, Judge, I would plead with this court, although I
10 have heard the court has already stated out loud what it
11 believes its ruling should be, I would ask for the court to
12 give us an opportunity to research this over the weekend and to
13 put together a presentation answering these five or six claims,
14 accusations by the government, so that the court will be fully
15 informed of all of the arguments prior to making a final
16 decision, because the ramifications of this final decision are
17 so significant. I would respectfully ask that the court afford
18 us over the weekend to place in writing our response, and at
19 that point the court may decide to issue the exact same ruling,
20 but I believe that, knowing this court, that having heard the
21 answers, it may have an effect.

22 THE COURT: Thank you, Mr. Garvin.

23 Mr. DiMase.

24 MR. DiMASE: Your Honor, I don't know if you would
25 like me to respond point by point. There are some things that

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1 are preposterous in that defense.

2 The idea that he Mr. Scott should be able to take
3 OneCoin victim money from an account in the Cayman Islands
4 that's subject to a restraining order without contacting the
5 government, just go ahead and do whatever he wants with it, if
6 he had some concern about the property and wanted to negotiate
7 its forfeiture, there are ways to do that legally.

8 I take it Mr. Garvin's defense on that particular
9 point is that he just felt like that was the best thing to do.
10 Even though it violated multiple orders, he did it without
11 asking anybody's permission, and that's OneCoin victim money.
12 There is a point to the restraining order. It is to get these
13 fraud proceeds back to the victims who deserve it.

14 But, anyway, I don't know that it's worth going
15 through one by one.

16 With respect to the car, Mr. Devlin-Brown's point that
17 it was before the trial doesn't really hit the heart of the
18 matter. The heart of the matter was he knew he bought it with
19 OneCoin money when he sold it. So whether it was before or
20 after trial I think is kind of irrelevant. He was on bail and
21 he committed this violation.

22 Bigger picture, your Honor, this is a series of
23 violations. It is a pattern of conduct. We have heard
24 Mr. Devlin-Brown and Mr. Garvin pull apart individual things
25 one at a time, but that's not really what this application is

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1 about. It's about a pattern of conduct while Mr. Scott is on
2 bail in this case and some of which happened after he was
3 convicted of serious federal fraud and money laundering
4 offenses.

5 If the defense counsel want to put in something to the
6 court after Mr. Scott is detained, they are obviously free to
7 do that and it can continue to be litigated at that point.
8 What they are basically asking is for Mr. Scott to be let out
9 with no security at all because Ms. Halle is getting her money
10 back and, in light of all of this conduct, the standard for
11 bail pending release, that is simply not appropriate, your
12 Honor, and the government continues to seek detention here.

13 THE COURT: Very well.

14 Mr. Moscato, I take it that you are in agreement with
15 the government's position.

16 THE PRETRIAL OFFICER: That is correct.

17 THE COURT: I have listened to Mr. Devlin-Brown and
18 Mr. Garvin obviously, and I understand that they are put in a
19 difficult position because of their learning about some of
20 these allegations now, and I certainly appreciate their
21 position, but I also know, having gotten to know about
22 Mr. Scott a little bit throughout the course of the trial, that
23 he is a very sophisticated lawyer who conducted very
24 sophisticated international transactions and knew or should
25 have known that some of the activities in which he was

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1 engaging, both before and after the trial, in connection with
2 properties that he knew or should have known were subject to
3 forfeiture was wrong and he did it anyway. This is not a case
4 where one can say, well, perhaps he didn't know that this
5 house, pictures of which were entered in evidence at the trial,
6 were not going to be part of this. So I just don't see that
7 there is an innocent explanation that can be provided
8 sufficient to overcome the burden that Mr. Scott has to prove
9 that he should be provided with bail, particularly in light of
10 Ms. Halle's withdrawal of the money that she has put in to the
11 court to assure Mr. Scott's continued appearance. So I don't
12 see how I can do anything under these circumstances other than
13 revoke bail and require Mr. Scott's remand.

14 Now I'm happy to look at whatever submissions the
15 defense wants to put in, but as for now, Mr. Scott is remanded.
16 Again, I will expect the government to provide the appropriate
17 information to him as to when and where -- when is tomorrow by
18 no later than 9, but where. To the extent that I need to
19 provide you with an order, I will do so. And Mr. Taylor, I
20 would ask you to submit a proposed order exonerating
21 Ms. Halle's bail.

22 MR. TAYLOR: Yes, sir.

23 THE COURT: And I will execute that order after my
24 review.

25 Is there anything else?

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1 MR. GARVIN: Yes, your Honor. Your Honor, counsel for
2 the government stated that they would not be opposed to the
3 defense submitting in writing its position even though the
4 court would have Mr. Scott surrender tomorrow. Would the court
5 be inclined to review that submission if we did have a date for
6 putting it in? I'm looking for some guidance as to a date.

7 THE COURT: I will review whatever you submit whenever
8 you submit it, Mr. Garvin.

9 MR. GARVIN: Yes, sir.

10 And, your Honor, I know that I have belabored the
11 point, and I apologize for not knowing when to stop, but I do
12 hope the court appreciates that the funds with regard to the
13 mortgage contractor, while we recognize that what Mr. Scott did
14 was inappropriate because he should have asked the government
15 for their consent, the money went into the property to keep the
16 value of the property so that the property, which is one of the
17 biggest pieces of assets that are available for restitution,
18 would not go down in value. This is not a case where he took
19 the \$250,000 and spent it on some lavish item for himself. The
20 funds went into the property that increased the value of the
21 property and maintained the property from being harmed, and I
22 think that there should be some distinction recognized for
23 that.

24 And as far as the situation with Ms. Halle, if
25 Mr. Scott was given an opportunity, he may be able to replace

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1 Ms. Halle, but obviously if he surrenders tomorrow, that's
2 going to -- at 9:00 that's going to greatly curtail his ability
3 to speak to people about replacing Ms. Halle. So I know the
4 court has ruled, but I would respectfully ask if Mr. Scott be
5 permitted to surrender on Monday morning instead of tomorrow
6 morning to enable him to find somebody to replace Ms. Halle and
7 to respond to these allegations.

8 THE COURT: Mr. DiMase, any response to that?

9 MR. DiMASE: Yes. We strongly object to that, your
10 Honor, and we request that the court stick with its ruling.

11 THE COURT: Very well.

12 Your application, Mr. Garvin, is denied except, to the
13 extent that you wish to submit anything, like I said, I am
14 happy to review anything that you submit.

15 Okay? We are adjourned.

16 oOo